

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

UNITED STATES OF AMERICA)
vs.) 7:19-CR-101-D1
CODY ALEXANDER LOCKLEAR,)
Defendant.)

AUGUST 3, 2020
SENTENCING HEARING
BEFORE THE HONORABLE JAMES C. DEVER III
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

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Raleigh, North Carolina
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I N D E X

GOVERNMENT'S WITNESSES

| | |
|----------------------------------|----|
| TIMOTHY SEALY | |
| Direct Examination by Ms. Webb | 12 |
| HOLLIS McNEILL | |
| Direct Examination by Ms. Webb | 17 |
| Cross-Examination by Ms. Allen | 27 |
| Redirect Examination by Ms. Webb | 32 |
| Recross-Examination by Ms. Allen | 33 |

1 (Monday, August 3, 2020, commencing at 10:01 a.m.)

2 P R O C E E D I N G S

3 THE COURT: We'll next take up the sentencing of
4 Cody Locklear.

5 Good morning, Ms. Allen. Are you and Mr. Locklear
6 ready?

7 MS. ALLEN: Good morning, Your Honor. Yes, we are.

8 THE COURT: Good morning, Ms. Webb. Is the
9 Government ready?

10 MS. WEBB: Yes, Your Honor.

11 THE COURT: At this time I'd ask that the defendant
12 be sworn or affirmed.

13 Stand up, please.

14 (The defendant, Cody Alexander Locklear, was duly sworn.)

15 THE COURT: Do you understand that having been
16 sworn, that your answers to my questions are subject to the
17 penalty of perjury; and if you were to lie to me, you could be
18 prosecuted for perjury or for making a false statement?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you taken any medicine or any other
21 substance in the last 48 hours that would affect your ability
22 to hear and understand this proceeding?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you know why you're here today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Ms. Allen, do you have any reason to
2 doubt Mr. Locklear's competence to go forward today?

3 MS. ALLEN: No, Your Honor.

4 THE COURT: Does the Government have any reason to
5 doubt Mr. Locklear's competence to go forward today?

6 MS. WEBB: No, Your Honor.

7 THE COURT: Based on Mr. Locklear's answers to my
8 questions, my observations of Mr. Locklear, and the answers
9 from counsel, I find that he is competent.

10 Mr. Locklear, you're here today having entered a
11 plea of guilty to three charges. The first charge is
12 conspiracy to distribute and possess with the intent to
13 distribute 40 grams or more of a mixture and substance
14 containing a detectable amount of fentanyl, 10 grams or more
15 of a mixture and substance containing fentanyl analogue, a
16 quantity of heroin and a quantity of cocaine; the second
17 charge is distribution of 10 grams or more of a mixture and
18 substance containing a detectable amount of fentanyl analogue,
19 a quantity of heroin and 40 grams or more of a mixture and
20 substance containing a detectable amount of fentanyl; the
21 third charge is possession of a firearms in furtherance of a
22 drug trafficking crime.

23 The sentencing guidelines are no longer mandatory;
24 they're advisory.

25 Nevertheless, I'm to take into account the

1 now-advisory guidelines. I do this by initially making
2 findings of fact and calculating an advisory guideline range.
3 I'll then consider any motion that might be made that might
4 move that range either up or down. I'll then consider all
5 arguments that your lawyer makes, both here in court and the
6 ones she's already made in the sentencing memo she submitted,
7 any statement you'd like to make about your sentence, and the
8 arguments that the Assistant United States Attorney makes
9 about your sentence. I'll then determine your sentence and
10 I'll announce it here in court today. That'll be the process
11 we'll follow.

12 Ms. Allen, did you receive a copy of the presentence
13 report?

14 MS. ALLEN: Yes, Your Honor.

15 THE COURT: Mr. Locklear, did you speak with your
16 lawyer, Ms. Allen, about the presentence report?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: At this time, the Court directs that the
19 presentence report be placed in the record under seal.

20 In accordance with Rule 32 of the Federal Rules of
21 Criminal Procedure, the Court accepts as accurate the
22 presentence report, except as to matters in dispute as set
23 forth in the addendum.

24 I have reviewed the entire record, including the
25 addendum. The addendum does contain objections.

1 Ms. Allen, does the defendant want to be heard on
2 these?

3 MS. ALLEN: We do, Your Honor.

4 THE COURT: All right. Mr. Locklear, you can have a
5 seat.

6 I'll hear from you.

7 MS. ALLEN: Your Honor, I do want to apologize. I
8 didn't introduce the woman sitting beside. She is a UNC law
9 student. Her name is Maureen Gleason, and she has assisted
10 with this case, so she'll be joining me at the table.

11 THE COURT: Good to have you here, ma'am.

12 MS. GLEASON: Thank you.

13 MS. ALLEN: With regard to the objections, Your
14 Honor, our very first objection is related to the CI's
15 observations. There were several controlled buys; and in a
16 couple of the controlled buys, the CI would enter the home and
17 look around and he would see things laying around.

18 Certainly, he saw a gun, that's not in dispute. But
19 what we do know is that he speculated about drug weights and
20 drug quantities as well as drug -- identifying drugs just by
21 looking at them. In one case he said he saw heroin in a
22 backpack; and, in fact, he even put a drug weight on it. The
23 video does show that there's a black backpack, but it does not
24 show at any time anything coming out of the backpack or that
25 there was any kind of discussion about what was in the

1 backpack or the weight of what was in the backpack.

2 THE COURT: Does it affect the guideline?

3 MS. ALLEN: It does not affect the guideline, Your
4 Honor. But for accuracy sake, it does make sense to not allow
5 something that is uncorroborated and unreliable to remain in
6 the PSR. We would ask that it be stricken.

7 And that is the same objection as relates to all of
8 the observations that the CI made with regard to drug
9 identification and drug weight.

10 THE COURT: All right. Ms. Webb, do you want to
11 respond to those objections?

12 MS. WEBB: Your Honor is correct in that all of the
13 defendant's objections regarding drug weight, both as to the
14 CI's observations and the defendant's objections about the
15 defendant's own statements putting historical weight on them,
16 if all of those objections were sustained, as the PSR notes,
17 there would be no net effect on the guideline range, so the
18 Government's position would be that the guideline sentence
19 based on drug weight as recommended in the PSR is appropriate.

20 However, the Government would also contend that the
21 CI's observations are not just naked observations, they're
22 corroborated by video recording in which quantities of these
23 drugs can be observed in plain view.

24 Your Honor, the -- each one of these controlled
25 purchases that the defendant references in the PSR was audio

1 and video recorded; each one of the controlled purchases if
2 drugs are not seen on the table or in the location described
3 because of the view or the angle of the video, there are other
4 details that could be corroborated.

5 For example, in the August controlled purchase, the
6 CI describes seeing drugs contained within a blue cooler
7 that's placed on a table where drugs are packaged for sale.
8 The video clearly shows one of the defendant's bringing a blue
9 cooler into the residence, place that blue cooler on the table
10 well within the view of the confidential informant.

11 During a September controlled purchase, you can see
12 quantities of what appears to be marijuana, quantities of what
13 appears to be cocaine, digital scales, U.S. currency, weapons,
14 the black backpack at issue, all within plain view on the
15 kitchen table.

16 Your Honor, I have screen shots from each of these
17 controlled purchases prepared for the Court's review, if Your
18 Honor would like to see them, as corroborating evidence.

19 I've also interviewed Detective Sealy with the
20 Robeson County Sheriff's Office who participated in each one
21 of these controlled purchases.

22 Detective Sealy is present behind us today.
23 Detective Sealy has confirmed that he's used this confidential
24 informant prior to this buy campaign on several occasions;
25 that this confidential informant provided independently

1 corroborated information on those prior occasions; and that
2 this confidential informant had provided estimates of drug
3 weights on previous occasions that were deemed to be accurate
4 and credible.

5 So, Your Honor, if this dispute were relevant as to
6 the PSR sentencing recommendation, the Government would
7 contend that it is accurate by preponderance of the evidence.
8 But at the end of the day, it has no bearing on what the PSR
9 recommends as to this defendant's sentence.

10 THE COURT: Okay. How about on the issue of whether
11 he was under a criminal justice sentence?

12 MS. ALLEN: Your Honor, we believe that does, in
13 fact, make a difference because if he was not -- if he was not
14 viewed as being under a criminal justice sentence, it would
15 move him back from a category V to a category IV.

16 THE COURT: But he doesn't deny selling cocaine
17 after March 27th, 2019, right?

18 MS. ALLEN: In fact, he does, Your Honor. On the
19 tape he denies it more than once. He denied it twice.

20 Initially, in the interview he's being interviewed
21 by TFO Roberts and Mr. Roberts is taking it slow and talking
22 to him and asking him questions; Cody is answering the
23 questions, and many times he's just nodding his head.

24 The conversation goes on, and it goes on and it's a
25 lengthy conversation. TFO Roberts for some reason did not

1 report the rest of the interview, he ends it without logging
2 it all. But there's a second part of the interview where
3 Cody -- he starts to recap with Cody and he asks him, so how
4 much were you selling since you came out? He said, I haven't
5 done anything since then. And he specifically says he had not
6 bought any drugs since he had gone to jail in January. He's
7 very specific about that.

8 THE COURT: Right, but that's the different issue,
9 right? I mean, we've both been doing this a long enough time
10 to know that some people go to jail and have a stash and they
11 get out and they don't have to buy more product; they have the
12 product. That's why I asked the question about him selling.
13 I mean, he is a committed drug dealer, no doubt about that. I
14 mean, this record speaks to that, and so that's a different
15 issue.

16 MS. ALLEN: Yes.

17 THE COURT: So what you're saying is that he didn't
18 buy it or sell it. The Government says and the Probation
19 Office says he sold it even if he contends he didn't buy any
20 more, like when he got out he got right back at what he does,
21 he's a drug dealer.

22 So you're saying that he didn't.

23 MS. ALLEN: Your Honor, we're saying that Cody
24 Locklear gave a statement. In that statement he said that he
25 was not involved with drugs anymore after that. He said he

1 didn't know where "Tootie" was. He said that he wasn't
2 bothering with that anymore.

3 THE COURT: So from March 27th, 2019 -- and I'm
4 going to have Ms. Webb call a witness if she wants. And let
5 me just say, acceptance of responsibility is on the table. It
6 is on the table.

7 So Ms. Webb, call a witness.

8 MS. WEBB: Your Honor, the Government would call
9 Detective Tim Sealy.

10 MS. ALLEN: Your Honor, we can withdraw our
11 objection. We don't have to go through all of that.

12 THE COURT: I'm perplexed. Do you contend that he
13 should not get these two points or not? Because if I hear a
14 witness and if I credit this witness and I find as a fact by a
15 preponderance of the evidence that he, in fact, was, I find
16 this to be a frivolous objection and I will take away
17 acceptance of responsibility.

18 MS. ALLEN: Your Honor, we don't want that to
19 happen.

20 What I was trying to point out to you is I have not
21 seen in the discovery corroboration about drug sales after
22 that date.

23 THE COURT: All right. They are going to put a
24 witness on and I'll listen to the witness. But I'm telling
25 you that we have drug weight objections that don't affect the

T. Sealy - Direct Examination

1 guidelines, and I'm going to listen to this witness and we'll
2 see where we are.

3 So come up and be sworn.

4 MS. ALLEN: Your Honor, we withdraw our objection.
5 We have no objection at this point. Thank you.

6 THE COURT: Ms. Webb, how do you want to proceed?

7 Come up and be sworn.

8 TIMOTHY SEALY,

9 having been duly sworn, testified as follows:

10 THE COURT: You may examine the witness.

11 DIRECT EXAMINATION

12 BY MS. WEBB:

13 Q. Good morning, Detective. Please state your name for the
14 Court.

15 A. Timothy Sealy.

16 Q. How are you employed?

17 A. I'm a detective at the Robeson County Sheriff's Office.

18 Q. How long have you been working at Robeson County
19 Sheriff's Office?

20 A. About three-and-a-half years now.

21 Q. Are you assigned specifically to the narcotic division?

22 A. I was. I'm now on the highway interdiction team for
23 about a year now.

24 Q. You are a K9 handler?

25 A. My partner is, yes, ma'am.

T. Sealy - Direct Examination

1 Q. So you have training and experience related to narcotics
2 investigations; is that right?

3 A. Yes, ma'am.

4 Q. And were you involved in the investigation against this
5 defendant, Mr. Cody Locklear?

6 A. I was.

7 Q. And you participated in the controlled purchases that
8 were done at various points in time, correct?

9 A. Yes, ma'am.

10 Q. And you're aware that in July of 2019 Mr. Locklear was
11 arrested and served with federal warrants related to this
12 case, correct?

13 A. I am.

14 Q. And on his arrest in July of 2019 was a cellular
15 telephone seized from his person?

16 A. Yes, ma'am.

17 Q. Okay. And did he give task force officer -- who is no
18 longer with the agency, I think he's changed jobs at this
19 point, but he gave Task Force Officer Roberts permission to
20 search his phone; is that correct?

21 A. Yes, ma'am.

22 Q. And have you reviewed some of the contents of the
23 download of that phone?

24 A. I have.

25 Q. Okay. And have you been able to determine from the

T. Sealy - Direct Examination

1 contents of that phone whether Mr. Cody Locklear appeared to
2 be engaged in drug sales between the end of March of 2019 and
3 July of 2019?

4 A. Yes, ma'am.

5 Q. Can you give us some examples of language that would lead
6 you to believe that?

7 A. Yeah. Okay. This would be on May the 30th of 2019 there
8 was a text message -- excuse me. There was a text message
9 from an individual named -- in the contacts it's Big Bro. It
10 was May 30, 2019. It says, Ken got an egg and cousin got a
11 half quarter. And then this was sent to Mr. Locklear. Then
12 there's another text right behind that one that says, I told
13 Rico 310. And Locklear responded, 310 for what? The Big Bro
14 responded, The ounce and half ounce. What they say? He
15 fixing to call back. And then there's a follow-on text
16 message that says, 210 for the ounce and 100 for the half.

17 Q. In that exchange does Mr. Locklear in the contact listed
18 as Big Bro appear to be negotiating over the price and
19 quantity of controlled substances?

20 A. Yes, ma'am.

21 Q. Is there also material in Mr. Locklear's phone in which
22 he and other individuals discuss the price of eight balls or
23 an eighth of an ounce of controlled substance or the quality
24 of various controlled substances?

25 A. Yes, ma'am.

1 Q. And is it true that there are text messages contained in
2 Mr. Locklear's phone referencing girl or fire or gas?

3 A. There is.

4 Q. And during the controlled buy campaign of Mr. Locklear,
5 did he use each of those terms to describe cocaine?

6 A. Yes, ma'am.

7 Q. Just to be clear, that content was time stamped between
8 the end of March 2019 and July of 2019?

9 A. Yes, ma'am.

10 MS. WEBB: Nothing further, Your Honor.

11 THE COURT: Cross-examination.

12 MS. ALLEN: We have no questions for this witness.

13 THE COURT: Thank you, sir. Please watch your step
14 stepping down.

15 Anybody else want to be heard on the objections?

16 MS. ALLEN: Your Honor, I still had objections as it
17 related to the overdoses. We were asking that they be
18 stricken from the PSR.

19 THE COURT: Okay. I'll hear from you.

20 MS. ALLEN: Your Honor, there was certainly
21 information in the discovery that there were people that were
22 passed out and that there was someone that was taken to the
23 hospital, and those were about overdoses. However, we were
24 not provided with any toxicology reports, any kind of chemical
25 reports that would connect the overdoses that are mentioned in

1 the discovery directly to anything that was sold by Cody
2 Locklear. There is science that is very easy to match up, and
3 we have none of that. We don't know who the victims are. We
4 don't know what their physical conditions were before or after
5 they were interviewed by the officers.

6 What we do know is one person talks about having
7 smoked crack and having done heroin at the same time. Those
8 people are anonymous. We haven't seen their medical records.
9 We haven't seen anything that would directly establish that
10 anything that Cody Locklear sold was responsible.

11 Your Honor, for those reasons, we would submit that
12 the Court -- that the Government has not proven beyond a
13 reasonable doubt a link to any serious physical injury caused
14 by Cody Locklear.

15 As a matter of fact, vomiting, passing in and out,
16 dozing in and out, all of those things can happen with any
17 drugs sold by anyone. Heroin addicts take drugs all day long.
18 Cocaine addicts, all day long, and sometimes they mix them.

19 We don't know what happened on those particular
20 occasions, but we would submit to this Court that there is not
21 enough evidence to support enhancing Cody Locklear's sentence
22 today based upon that information.

23 THE COURT: All right. I'll hear from the
24 Government.

25 MS. WEBB: Yes, Your Honor. As to the overdoses,

H. McNeill - Direct Examination

1 the Government would call Detective Hollis McNeill.

2 HOLLIS McNEILL,

3 having been duly sworn, testified as follows:

4 THE COURT: You may examine the witness.

5 MS. WEBB: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. WEBB:

8 Q. Detective McNeill, if you don't mind removing your mask
9 just for clarity sake.

10 Please state your name for the Court.

11 A. Hollis McNeill.

12 Q. How are you employed?

13 A. Robeson County Sheriff's Office.

14 Q. How long have you been with the Robeson County Sheriff's
15 Office?

16 A. Around thirteen years.

17 Q. What is your current job assignment?

18 A. I move all the house arrest pretrial people in Robeson
19 County.

20 Q. Have you previously worked with the narcotics division in
21 the sheriff's office?

22 A. Yes, ma'am.

23 Q. So you are trained and experienced in narcotics
24 distribution investigations; is that correct?

25 A. Yes, ma'am.

H. McNeill - Direct Examination

1 Q. Were you involved in the investigation against the
2 defendant, Cody Locklear?

3 A. Yes, ma'am.

4 Q. How did you become involved in that particular
5 investigation?

6 A. Complaints on overdoses.

7 Q. Were these overdose complaints within any specific area
8 of Robeson County?

9 A. Yes, ma'am.

10 Q. Where was that?

11 A. On Mount Zion Road, everybody that we spoke with was
12 pretty much adamant about it was near the horse track, and
13 there's only one horse track near there.

14 Q. And did the descriptions that these victims gave of the
15 residence at issue, did they match a particular residence that
16 y'all were aware of?

17 A. Yes, ma'am.

18 Q. And would that be 2051 Mount Zion Church Road address?

19 A. Yes, ma'am.

20 Q. Now, the timeframe for those overdose complaints, when
21 would that have been?

22 A. It was 2018. I don't know the exact dates. 2018. I
23 don't have my paperwork. It's back there.

24 Q. Does August 2018 sound correct?

25 A. Yeah, it was on a Friday. Yes, ma'am, that was it,

H. McNeill - Direct Examination

1 August 18th.

2 Q. And these overdoses were all within a short timeframe of
3 each other; is that right?

4 A. Yes, ma'am.

5 Q. Now, let's start with August 15th of 2018. Did y'all
6 receive a complaint of an overdose that occurred on that
7 particular day?

8 A. Yes, ma'am.

9 Q. And on that particular day, Robeson County Sheriff's
10 Office responded and found a female and a male passed out in
11 the middle of the roadway essentially; is that right?

12 A. Yes, ma'am. Deputy Thomas pulled up on scene.

13 Q. Is that near the 2051 Mount Zion Church Road area?

14 A. Yes, ma'am.

15 Q. Okay. And describe for us what officers found or what
16 EMS workers found when they arrived to that location?

17 A. They were unresponsive, short of breath.

18 Q. Would that be --

19 A. Trouble breathing.

20 Q. Both the female and the male?

21 A. Yes, ma'am.

22 Q. And did EMS respond to give medical aid?

23 A. They did, yes, ma'am.

24 Q. Have you had a chance to review EMS records that you
25 obtained as part of the investigation?

H. McNeill - Direct Examination

1 A. Yes, ma'am.

2 Q. Do the EMS records corroborate that the two people in the
3 vehicle were unresponsive and short of breath?

4 A. Yes, ma'am.

5 Q. And if you recall, about how many breaths per minute were
6 these individuals taking?

7 A. I do not recall the actual breaths per minute, but I know
8 it was really short.

9 Q. And so it was to the point where medical intervention was
10 necessary; is that right?

11 A. Yes, ma'am. Narcan was administered.

12 Q. To both people?

13 A. Both people, yes, ma'am.

14 Q. Were both individuals on scene after receiving Narcan
15 transported to the hospital for further treatment?

16 A. Yes, ma'am.

17 Q. Now, did the EMS records indicate that the female and the
18 male victim told them what they had used prior to losing
19 consciousness?

20 A. Yes, ma'am.

21 Q. What did both of them say to EMS?

22 A. I think one said dog food; the other one said heroin.

23 Q. Based on your training and experience, what is dog food a
24 term for?

25 A. Heroin fentanyl mixed.

H. McNeill - Direct Examination

1 Q. Okay. Now, at some point after these two individuals
2 recovered, were they interviewed by law enforcement or was
3 either of them interviewed by law enforcement?

4 A. Yes, Ms. Amelia was.

5 Q. That would be the female that was in the driver seat of
6 that vehicle?

7 A. Yes, ma'am.

8 Q. And did she give law enforcement a description of where
9 they had purchased the heroin that they told law enforcement
10 they used?

11 A. Yes, ma'am.

12 Q. And where was that?

13 A. It was on -- right off of Mount Zion near the horse track
14 down a dirt road. I think that she described it as a brown or
15 bronze-looking trailer, single-wide.

16 Q. Is that consistent with the 2051 Mount Zion Church Road
17 location?

18 A. Yes, ma'am. That's the only one over there in that area.

19 Q. And when you talked to this female about the heroin she
20 purchased from that location, did she indicate whether or not
21 any drugs were taken between purchasing that heroin and
22 ingesting that heroin?

23 A. I think early in the earlier hours I think she had had
24 some cocaine, I think.

25 Q. But between the purchase of the heroin and ingesting that

H. McNeill - Direct Examination

1 heroin, was anything else taken?

2 A. No, ma'am.

3 Q. And how -- did it appear from her statement that it was a
4 brief period of time between purchasing the heroin and
5 ingesting the heroin?

6 A. Yes, ma'am.

7 Q. Did she indicate that they used it shortly after leaving
8 that trailer?

9 A. Yes, ma'am.

10 Q. Okay. And was a substance actually collected from her
11 vehicle and field tested by law enforcement?

12 A. Yes, ma'am.

13 Q. And what did that field test reveal that substance to be?

14 A. Positive for heroin.

15 Q. Now, that was on August 15th of 2018. Isn't it true that
16 on August 16th of 2018 a controlled purchase was conducted
17 from this defendant and another individual at that 2051 Mount
18 Zion Church Road address?

19 A. Yes, ma'am.

20 Q. And are you aware that that substance returned as being
21 positive for fentanyl from the North Carolina State Crime Lab?

22 A. Yes, ma'am.

23 Q. Based on your training and experience, is it common in
24 overdose cases for heroin to be substituted with fentanyl?

25 A. Yes, ma'am.

H. McNeill - Direct Examination

1 Q. Now, on August 17th of 2018, did law enforcement respond
2 to another overdose report coming from that same trailer?

3 A. Yes, ma'am.

4 Q. And tell us about that second incident.

5 A. It was a Mr. McNeil and a Mr. Locklear. We both
6 interviewed both defendants and they both said that James
7 Tyler said he only remembered -- James Tyler is James
8 Locklear, but he said he remembered eating a hamburg and
9 that's all he remembered.

10 Q. Now, let's walk through this incident. The Red Springs
11 Police Department responded to report of a vehicle in a
12 roadway with two individuals passed out therein; is that
13 right?

14 A. Yes, ma'am.

15 Q. That was these two individuals that you referenced?

16 A. Yes, ma'am.

17 Q. Red Springs Police Department at that point in time did
18 not carry Narcan and they radioed to the sheriff's department
19 for assistance, correct?

20 A. That is correct.

21 Q. Did EMS also respond to that scene?

22 A. Yes, ma'am.

23 Q. Did you collect the EMS reports and review them as part
24 of your investigation?

25 A. Yes, ma'am.

H. McNeill - Direct Examination

1 Q. What did those reports reveal about the state of these
2 two individuals when they got on scene?

3 A. They were both unresponsive.

4 Q. And did it appear from the EMS reports that those
5 individuals were having trouble breathing?

6 A. Yes, ma'am.

7 Q. Okay. And based on your training and experience, is that
8 consistent with a heroin overdose?

9 A. It is.

10 Q. Now, did EMS administer Narcan to each of those
11 individuals there on scene?

12 A. Yes, ma'am.

13 Q. And those individuals were transported to the hospital
14 thereafter?

15 A. Yes, ma'am.

16 Q. Did any law enforcement make contact with either of those
17 folks at the hospital?

18 A. Yes, ma'am.

19 Q. And what agency would that have been?

20 A. Robeson County Sheriff's Office.

21 Q. And did the highway patrol also make contact with the
22 driver of that vehicle?

23 A. Yes, ma'am.

24 Q. And were you able to collect that trooper's notes as part
25 of your investigation?

H. McNeill - Direct Examination

1 A. Yes, ma'am.

2 Q. And did those notes reveal that the driver, after having
3 received Narcan, was still having trouble maintaining focus,
4 was nauseous, and was experiencing overdose symptoms?

5 A. Yes, ma'am.

6 Q. Now, after these individuals were released from the
7 hospital, did you have a chance to interview both of them?

8 A. Yes, ma'am.

9 Q. Now, starting with the driver of that vehicle, what did
10 he tell you about what, if any, substance they had taken?

11 A. He -- they spoke of dog food, which was heroin, and just
12 said where they purchased it from. They didn't -- he didn't
13 know the address but said it was near the horse track, down a
14 dirt road and gave us a description of and told us -- he
15 actually said he actually got it from Cody, and he know Cody
16 from the streets.

17 Q. The description of the residence, was that the same
18 description that the first overdose victim gave you about
19 where the heroin was purchased?

20 A. Yes, ma'am.

21 Q. And was that consistent with what y'all knew to be 2051
22 Mount Zion Church Road?

23 A. Yes, ma'am.

24 Q. You said this driver specifically mentioned seeing Cody
25 at that address. Did he indicate that Cody was the one that

H. McNeill - Direct Examination

1 he conducted a deal with?

2 A. Yes, ma'am.

3 Q. And what comments did he make about the drugs that Cody
4 was selling?

5 A. It was killing people.

6 Q. And did you have a chance to speak to the passenger in
7 that vehicle as well?

8 A. Yes, ma'am.

9 Q. And did the passenger give a similar description of where
10 they purchased the heroin from?

11 A. Yes, ma'am.

12 Q. And in speaking with the driver and the passenger of that
13 vehicle, did they indicate that they used this heroin shortly
14 after leaving the residence?

15 A. Yes, ma'am.

16 Q. Did they discuss using any other drugs between leaving
17 the trailer where they purchased the heroin and ingesting it?

18 A. No, ma'am.

19 Q. Were any other drugs found in their vehicle?

20 A. No, ma'am.

21 Q. Now, based on this information and your observations of
22 the 2051 Mount Zion Church Road residence, you applied for a
23 State Court search warrant to search that location; is that
24 right?

25 A. Yes, ma'am.

H. McNeill - Cross-Examination

1 Q. And the information about the overdoses that you
2 discussed here in court you included in your search warrant
3 application, didn't you?

4 A. Yes, ma'am.

5 Q. And did a Superior Court judge upon reviewing that
6 information find that there was probable cause to search that
7 location?

8 A. Yes, ma'am.

9 MS. WEBB: Nothing further at this time.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MS. ALLEN:

13 Q. Good morning, Detective McNeill.

14 A. How are you?

15 Q. Good.

16 You testified about three instances -- three instances:
17 One from August 15th, and two different instances from
18 August 17th, and two different people from August 17th, right?

19 A. Amelia and Carpenter were together and James and Tyler
20 were together.

21 Q. The first one, was that Amelia and the other person?

22 A. Yeah, I'll have to get my notes, but, yeah.

23 Q. Let's just talk about the first one.

24 You testified that they said that they had both had
25 heroin, one of them called it dog food?

H. McNeill - Cross-Examination

1 A. Yes, ma'am.

2 Q. Right. Did they tell you that directly? Were you the
3 person that interviewed them?

4 A. I interviewed Amelia.

5 Q. You interviewed Amelia. She also told you that she had
6 been smoking crack, right?

7 A. Earlier that day, yes, ma'am.

8 Q. You don't know how long -- how much time had passed
9 between the time she last smoked crack and the time that she
10 decided to ingest heroin, do you?

11 A. It was before they dropped Carpenter off at the field, so
12 it was before 11:30.

13 Q. You don't know how much time had passed between the time
14 she took crack and the time she took heroin, do you?

15 A. No, ma'am.

16 Q. And you don't know how much crack she took, do you?

17 A. No, ma'am.

18 Q. And you don't know if she took more heroin prior to
19 taking the crack that day, do you?

20 A. No, ma'am.

21 Q. You don't know how much crack she took the day before, do
22 you?

23 A. No, ma'am.

24 Q. Or whether she continued to smoke crack and take heroin
25 the days after?

H. McNeill - Cross-Examination

1 A. No, ma'am.

2 Q. The same thing with her companion. What was her
3 companion's name?

4 A. I don't know if they're companions, but it was
5 Mr. Carpenter.

6 Q. They were together, right?

7 A. Yes, ma'am.

8 Q. That's all I meant. I wasn't trying to imply a
9 relationship.

10 With regard to him, you don't know what his drug history
11 was, do you?

12 A. No, ma'am.

13 Q. You don't know how much heroin he took that day, do you?

14 A. No, ma'am.

15 Q. You don't know where he got all the heroin that he may
16 have taken from, do you?

17 A. No, ma'am.

18 Q. You don't know if he took something other than heroin
19 that day?

20 A. No, ma'am.

21 Q. The same question really applies to the next two people
22 that you talked about. And, I'm sorry, their names were kind
23 of confusing. Who told you that he was eating a hamburger and
24 that's all he remembered?

25 A. James Locklear.

H. McNeill - Cross-Examination

1 Q. James Locklear. Now, James Locklear was found on the
2 road, unresponsive on the road along with someone else?

3 A. Yes, ma'am.

4 Q. And your testimony connects them buying heroin from Cody
5 or from the home where Cody was living, right?

6 A. Yeah, that was Jayson.

7 Q. Okay.

8 A. McNeil.

9 Q. So during the interview, you don't know anything about
10 James' medical history, do you?

11 A. No, ma'am.

12 Q. You don't know how long he had been using heroin?

13 A. No, ma'am.

14 Q. You don't know how much heroin he used every day?

15 A. No, ma'am.

16 Q. But as a law enforcement officer, you know that heroin
17 addicts pretty much use heroin all day long?

18 A. I don't make that assumption.

19 Q. But as a law enforcement officer, in your experience,
20 people who are addicted to heroin have to have it every day,
21 right?

22 A. They use.

23 Q. And they get up looking for it? They wake up looking for
24 it?

25 A. I'm not making that assumption.

H. McNeill - Cross-Examination

1 Q. Okay. Again, you have no idea how much drugs James
2 ingested before he ever even went to the trailer on Mount Zion
3 Road, do you?

4 A. No, ma'am.

5 Q. You don't know how much drugs he ingested after he went
6 to the trailer on Mount Zion Road, do you?

7 A. No, ma'am.

8 Q. Or the following day after the Narcan made him feel
9 better, do you?

10 A. No, ma'am.

11 Q. And the same would apply to the fourth fella, you have no
12 idea how many drugs that person took on any day, do you?

13 A. No, ma'am.

14 Q. You said somebody told you they were having a hard time
15 focusing or had some dizziness. Which one told you that?

16 A. Ms. Amelia, I think. About all of them told me that
17 honestly when I interviewed them. They were all having
18 problems, symptom -- symptomatic problems, I guess.

19 Q. Out of those symptoms, you don't know when those symptoms
20 started, do you?

21 A. No, ma'am.

22 Q. You don't know if they have problems focusing and
23 dizziness the day before or for weeks at a time, do you?

24 A. No, ma'am.

25 Q. So you really aren't in a position to say that anything

H. McNeill - Redirect Examination

1 that Cody Locklear did caused their dizziness or their trouble
2 focusing, are you?

3 A. No, ma'am.

4 MS. ALLEN: Nothing further.

5 THE COURT: Anything else?

6 MS. WEBB: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. WEBB:

9 Q. Detective McNeill, when you talked to these individuals,
10 did you make it clear that the purpose of your conversation
11 was to attempt to determine who caused these overdoses and who
12 is selling the heroin at issue?

13 A. Yes, ma'am.

14 Q. Okay. Did it appear that each of those individuals that
15 you interviewed understood that?

16 A. Yes, ma'am.

17 Q. Okay. And based on your training and experience in law
18 enforcement, do you believe that each of those individuals
19 provided credible information to you about the source of their
20 heroin?

21 A. Yes, ma'am.

22 Q. Do you believe they provided credible information to you
23 about what drugs they ingested leading up to their loss of
24 consciousness?

25 A. Yes, ma'am.

H. McNeill - Recross-Examination

1 Q. Based on your training and experience dealing with heroin
2 and heroin overdoses, does a heroin overdose take hold of
3 somebody quickly?

4 A. Yes, ma'am.

5 Q. Okay. So there would not be time for somebody to seek or
6 use other drugs between ingesting the heroin and loss of
7 consciousness; is that right?

8 A. Usually, they're disoriented.

9 Q. So the effects of such an overdose are quick to come on
10 to somebody; is that right?

11 A. Yes, ma'am.

12 Q. And loss of consciousness obviously would preclude
13 somebody from seeking or using other drugs?

14 THE COURT: Yes, ma'am.

15 MS. WEBB: Nothing further, Your Honor.

16 THE COURT: Anything else?

17 RECROSS-EXAMINATION

18 BY MS. ALLEN:

19 Q. Detective McNeill, you're not a chemical expert, are you?

20 A. No, ma'am.

21 Q. And you haven't reviewed any labs or chemical analysis
22 that would connect anything that may have sickened the people
23 you talked about to anything sold by Cody Locklear, have you?

24 A. No, ma'am.

25 MS. ALLEN: Thank you. Nothing further.

1 THE COURT: On the August 15th, the initials A.S.,
2 you said that was Ashley?

3 THE WITNESS: Amelia.

4 THE COURT: Did you know her last name?

5 THE WITNESS: What's that last name? Scott.

6 THE COURT: Scott?

7 THE WITNESS: Scott.

8 THE COURT: And then the other one was D.C.

9 THE WITNESS: David Carpenter.

10 THE COURT: And then the August 17th one were the
11 two males. Tell me their names again.

12 THE WITNESS: One was Jayson McNeil and the other
13 one was James Tyler Locklear.

14 THE COURT: James Tyler Locklear?

15 THE WITNESS: Yes, sir.

16 THE COURT: Which of them said that he bought the --
17 on the 8/17 one, you said one of them knew Cody Alexander
18 Locklear from the streets and he had bought the dog food from
19 him. Who was that?

20 THE WITNESS: That was Jayson McNeil.

21 THE COURT: And you did that interview, right?

22 THE WITNESS: Yes, yes.

23 THE COURT: Any follow up on that?

24 MS. WEBB: No, sir, Your Honor.

25 THE COURT: Any follow up on that?

1 MS. ALLEN: No, Your Honor.

2 THE COURT: Thank you. Sir, please watch your step
3 stepping down.

4 Anything else?

5 MS. WEBB: Yes, Your Honor. Based on the evidence
6 from Detective McNeill, the Government would contend that an
7 upward departure or variance --

8 THE COURT: I'm not to that point yet. I'm going
9 to --

10 MS. WEBB: The Government would just point out that
11 the factual information about the overdose that was included
12 in the PSR's original draft was not objected to by the
13 defendant if you reviewed the addendum. So therefore the
14 Court can take that information in addition to what Detective
15 McNeill has told us today in court about that as true.

16 The PSR included information about both A.S. and
17 D.C. and the overdose incident with J.L. and J.M., made
18 reference to that. It was unequivocal what the reference was
19 about; and in the initial draft of the PSR, the defendant did
20 not object to that information. So while that does not play
21 into the guideline calculation, the Government would contend
22 that the Court can accept that information as true in both its
23 decision regarding guideline sentencing and any other motions
24 that are before the Court.

25 THE COURT: Ms. Allen?

1 MS. ALLEN: Your Honor, with regard to the
2 Government's position that we did not object, I will take full
3 responsibility for that. That was something that we intended
4 to object to from the very beginning. The drug calculations
5 got very cumbersome and at some point I was so focused on
6 trying to clear up what the CI saw versus what was actually
7 obtained that I failed to raise that objection.

8 I did try to address the objection as clearly as I
9 could in the sentencing memorandum so that the Court would be
10 aware of our position. I didn't realize that I had failed to
11 object to them until I began to work on the memorandum and
12 read the Government's motion.

13 So we would ask you to consider it an objection at
14 this point.

15 (Pause in the proceeding.)

16 MS. ALLEN: Your Honor, may I add something?

17 THE COURT: Yes.

18 MS. ALLEN: We would suggest that it would have been
19 helpful to have some sort of expert that could talk about a
20 connection to what was being sold to the people that were
21 actually victims. And it's very unfortunate to hear that they
22 are addicted and were having overdoses, but we would submit to
23 this Court that the Government has not proven beyond a
24 reasonable doubt --

25 THE COURT: You think that's the standard at

1 sentencing, beyond a reasonable doubt?

2 MS. ALLEN: No, not at sentencing, Your Honor. It's
3 not, but --

4 THE COURT: The standard is preponderance.

5 MS. ALLEN: By a preponderance of the evidence.

6 Again, we would suggest to this Court that serious injury has
7 not been proven. A trip to the hospital alone doesn't do it,
8 vomiting doesn't do it, somebody zoning in and out off drugs
9 doesn't do it. We'd ask you to consider those things, Your
10 Honor.

11 Thank you.

12 THE COURT: Thank you.

13 (Pause in the proceeding.)

14 THE COURT: In connection with the objections that
15 are in the PSR, the first objection is to the confidential
16 informant's observations on August 16th, 2018, September 27th,
17 2018, and October 15th, 2018.

18 The second objection in the PSR is this objection to
19 being held accountable for the amphetamine found during the
20 execution of the search warrant, but that objection appears to
21 have been withdrawn at Docket Entry 118, page 2, Footnote 1.

22 The third objection is to the drug weight on
23 March 27th, 2019, to July 17th, 2019, as reflected in the
24 third objection in the addendum.

25 With respect to the first and third objection, they

1 do not affect the drug weight for purposes of the advisory
2 guideline calculation. At sentencing the Government must
3 prove the drug quantity attributable to the defendant by
4 preponderance of the evidence. See United States v. Bell, 667
5 F.3d 431, 441 (4th Cir. 2011).

6 The Court may consider relevant information without
7 regard to the admissibility at trial providing that the
8 information has sufficient indicia reliability to support its
9 probable accuracy. See United States v. Crawford, 734 F.3d
10 339, 342 (4th Cir. 2013).

11 The Government has to present evidence from which
12 the sentencing Court may proximate the quantity. See Bell,
13 667 F.3d 441.

14 The Court can rely on hearsay testimony of a lay
15 witness. See Crawford, 734 F.3d at 343.

16 Here, again, the drug weight itself doesn't affect
17 the advisory guideline calculation. I do think the probation
18 officer properly described the evidence and I overrule the
19 objection, although it doesn't affect the advisory guideline
20 range.

21 As to the fourth objection, the defendant denies
22 selling drugs between March 27th, 2019, and July 17, 2019,
23 therefore he objects to the application of the two additional
24 history points for which he was under a criminal justice
25 sentence.

1 We had a discussion about this. Ms. Webb called a
2 witness, Ms. Allen then attempted to withdraw the objection
3 after being advised that acceptance of responsibility was at
4 issue.

5 I do find the testimony of Detective Sealy from the
6 Robeson County Sheriff's Office to be credible and persuasive.

7 I do find that Cody Alexander Locklear, as reflected
8 in particular in the text messages from on or about May 30th,
9 2019, reflect that he was engaged in selling cocaine and that
10 he falsely denied that as part of this; that he should get the
11 two criminal history points.

12 Section 4A1.1(d) provides that if the defendant
13 committed the instant offense while under any criminal justice
14 sentence, including probation, parole, supervised release,
15 imprisonment, work release, or escape status gets two points.

16 Having credited the evidence the Government has
17 presented and looking at Locklear's status at the time as of
18 May 30th, 2019, the probation officer properly scored that.

19 As for the issue associated with paragraph 19 and
20 paragraph 21, the defendant didn't timely object to that.
21 Pursuant to Rule 32, the Court already accepted that as
22 accurate. Alternatively, I have considered the evidence by a
23 preponderance of the evidence. I do credit the testimony of
24 Detective Hollis McNeill. Detective McNeill testified
25 credibly concerning his role in the investigation and his

1 interactions and review of other materials concerning Amelia
2 Scott and David Carpenter on August 15th, 2018, and Jayson
3 McNeil and Tyler Locklear on August 17th, 2018.

4 He credibly testified, and I find by a preponderance
5 of the evidence that the probation officer did properly score
6 and describe the events of responding by the Robeson County
7 Sheriff's Office to an overdose of Amelia Scott and David
8 Carpenter on or about August 15th, 2018. They had to be
9 administered Narcan. One described getting heroin; one
10 described getting dog food. Dog food street name is
11 heroin-fentanyl mix. And the description of Ms. Amelia Scott
12 where she was interviewed, she had purchased the narcotics at
13 the trailer with a description of 2051 Mount Zion Church Road.
14 There's only one there that fit the description.

15 I do find by a preponderance of the evidence that
16 she did use that heroin shortly after that; that heroin did
17 field test positive as heroin. I do find that was by a
18 preponderance what caused her to overdose that day, along with
19 David Carpenter.

20 And in accordance with Agent McNeill's credible
21 testimony, I also find that the events of August 17th, 2018,
22 are properly recounted in paragraph 21. Agent Hollis McNeill
23 or Detective Hollis McNeill credibly testified and explained
24 the interactions initially of the Red Springs Police
25 Department upon finding Jayson McNeil and James Tyler

1 Locklear. EMS having to respond to provide Narcan to the two
2 individuals and then the interaction with the State Highway
3 Patrol, as well as the detective's interview of the driver
4 describing that he had obtained dog food from Cody Alexander
5 Locklear, who is the defendant in this case.

6 By preponderance of the evidence I do find he was
7 the one who sold the heroin-laced fentanyl to the individuals
8 in the car, Jayson McNeil and James Tyler Locklear; and I do
9 find by preponderance of the evidence that Probation has
10 properly recounted Cody Alexander Locklear's sale of these
11 narcotics and overrule the objections.

12 All right. I'll hear from the Government.

13 So for purposes of *Booker* and its progeny, the total
14 offense level is 29, the criminal history category is V, the
15 advisory guideline range on Count 1 and 7 is 140 to 175
16 months; on Count 11, it's five years consecutive.

17 I'll hear you on your upward departure motion.

18 MS. WEBB: Yes, Your Honor.

19 As the Court has discussed, the Court has found by
20 preponderance of the evidence that these overdoses did occur
21 and that these overdoses could be attributed to the heroin
22 that was sold by this defendant or at this defendant's
23 residence from which drug operations were occurring.

24 The Government in its upward departure motion
25 discusses these overdoses. And in the alternative, if the

1 Court were inclined to consider an upward variance instead
2 discusses the nature and characteristics of this defendant in
3 that this defendant has had numerous State Court convictions
4 for drug distribution and for weapons possession. This
5 defendant has had instances where his probation was revoked
6 due to non-compliance. This defendant was on pretrial release
7 for the State Court charges which he later pled guilty to and
8 served that two months we've heard about. He was on pretrial
9 release for those charges during the entire course of this
10 relevant conduct, went to prison, and then got back out and
11 continued selling drugs, as the Court heard.

12 I think it's also especially relevant in considering
13 the necessity of an upward departure or variance the fact that
14 this defendant was involved in selling heroin from a location
15 where multiple overdoses relate to where fentanyl was
16 purchased during that same timeframe. That residence was
17 searched in August of 2018 and instead of wrapping things up
18 and saying, hey, y'all caught me, I'm done or saying, you
19 know, hey, this heroin stuff is really dangerous maybe I
20 should stop selling it, this defendant's reaction to being
21 searched by law enforcement is to just pick up and move to a
22 new house.

23 As the Court notes from the PSR, the September and
24 October 2018 controlled purchases, one of which was also for
25 heroin fentanyl and a fentanyl analogue were just conducted at

1 a separate location. He simply picked up his operation and
2 moved.

3 And I would represent to the Court that the
4 discovery actually includes text message conversations between
5 this defendant and the confidential informant about how he's
6 got a new spot because the other spot got too hot or drew too
7 much law enforcement attention.

8 So, Your Honor, there was no remorse or hesitation
9 about continuing to poison the community with heroin fentanyl
10 and fentanyl analogue after this search warrant occurred.

11 Your Honor, the case laws I noted in my motion is
12 fairly sparse on the applicability of 5K2.2 in the instance of
13 drug overdose incidents. However, I was able to locate the
14 case cite. It's United States v. Prince from the Sixth
15 Circuit which does specifically find in the case of a heroin
16 overdose where the victim lost consciousness in a store, was
17 administered Narcan, regained consciousness in the store, and
18 then refused further medical attention and refused to go to
19 the hospital. The Court found that application of 5K2.2 for
20 physical injury in that instance was appropriate. And in that
21 case, the Court heard testimony from the case agent about
22 reduced respiration rate, about loss of consciousness. And
23 that's what we got with all four of the overdose victims in
24 the case before the Court here today.

25 We heard testimony about administration of Narcan,

1 loss of consciousness, reduced breathing rate, and all four of
2 our victims required transport to the hospital for further,
3 more advanced medical treatment. They were unable to just get
4 up and leave the store where they overdosed or the location
5 where they overdosed without further medical intervention.

6 The Prince case describes how permanent injury or
7 injury that requires surgical intervention or other types of
8 injuries are not required for the 5K2.2 enhancement to apply.

9 And this case also discusses that courts have also
10 found that overdoses are appropriate reasons to upwardly vary
11 if the Court is not convinced that 5K2.2 does apply
12 specifically to those circumstances.

13 I would also note, Your Honor, that there is no case
14 out there holding that these overdoses are supposed to be
15 proven beyond a reasonable doubt in a sentencing context or
16 that the heroin has to be proven to be the sole, only cause of
17 symptoms.

18 We've got the Burrage case cited in the defendant's
19 sentencing memo; but at this point in time, there's nothing
20 extending Burrage to sentencing for relevant conduct rather
21 than sentencing for an actual distribution causing death,
22 which is not what we've charged the defendant here with today.

23 Your Honor, the Government would request that this
24 Court depart upward two levels; one level for each overdose
25 incident, taking us from total offense level 29 to 31. As the

1 defendant is a criminal history category V, that would move
2 our guideline range up to 168 to 210 months. The Government
3 would be requesting a sentence at the top of that guideline
4 range, 210 months.

5 And, Your Honor, looking at all of the factors in
6 3553, the need to protect the public from this defendant, the
7 need to stop his drug dealing, the need to deter people in
8 Robeson County from disseminating these deadly chemicals to
9 the public, the sentencing factors support an imposition of
10 that kind of sentence.

11 THE COURT: Plus the 60?

12 MS. WEBB: Yes, sir. Plus the 60 months for the
13 924(c), giving us a total sentence of 270 months.

14 THE COURT: All right. I'll hear from Ms. Allen.

15 MS. ALLEN: Your Honor, we understand that you found
16 by a preponderance of the evidence that Cody was somewhat
17 responsible for the overdoses. We would suggest to you that
18 an upward variance and an upward departure, or both, are not
19 appropriate in this case. And certainly, Cody has accepted
20 responsibility for what he was doing; but at the time I don't
21 think Cody really appreciated the full effect of what was
22 going on.

23 His guideline is 200 to 235, 200 months to 235
24 months if you add on the 60 months to the first two counts, as
25 you will. Cody has never served more than two years, more

1 than two years incarcerated. And while it does appear that he
2 has -- he did not learn his lesson -- we know that he didn't
3 learn his lesson or he wouldn't be here today. For him to
4 actually serve a sentence of what the Government is asking,
5 270 months, that is over 20 years -- that is actually 22,
6 around 22 years in prison.

7 Cody is 28 years old. Now, I would never attempt to
8 minimize the fact that someone was very sick and that
9 addiction is a serious problem, but what we do know is that
10 Cody has some redeemable qualities and those are things I'll
11 be happy to go into now, Your Honor, and why the variance is
12 not necessary and would actually be greater than sufficient.

13 First of all, the characteristics of the defendant
14 would show that when Cody was about 11 years old his mom and
15 dad separated. Cody went to live with his dad. Cody told me
16 his dad was his best friend. But by the time Cody got to be
17 14 years old, his dad was suffering from diabetes; he was
18 suffering from -- he was having to go to dialysis, and
19 eventually got cancer. Cody was the only one there with his
20 dad. So at 14 he became the primary caregiver for an adult.
21 So he struggled, but he took care of his father. There was no
22 nurse coming in. They had no medical insurance. He had to
23 cook, he had to clean, he had to bathe his father, and he
24 still graduated high school. He said he was also responsible
25 for doing yard work and everything else that needed to be

1 done, but he was being a faithful, loyal son.

2 I bring this up because we heard all the bad things
3 that Cody did today, but this was a child whose childhood was
4 interrupted and whose parents were not around.

5 At one point his mom did say you can come back home,
6 son. But Cody couldn't leave his dad, his dad didn't have
7 anybody else to take care of him and he just could not do that
8 to his father.

9 By the time Cody was 18, he was using cocaine and
10 marijuana. By the time he was 19, he had a kid. By the time
11 he was 21, he had a second kid. The only girlfriend he's ever
12 had, they have two children, and she's still sticking by him.
13 But he's someone who slid into trouble early on and never got
14 out of it. And I'm sure he'd never admit it, I'm sure he
15 never dreamed he'd be here today but, of course, we all see
16 how obvious it was that he would be here today; but not Cody.
17 He's 28 years old and few of us at 28 years old we're looking
18 very far down the road about what we were doing back then. A
19 few of us may have been but very few.

20 I don't think that Cody really appreciated the risk
21 and the consequences of his actions. Unfortunately, today he
22 stands here to be sentenced before you. And even the
23 guideline without any variance and with any departure is sky
24 high for someone that is 28 years old who has a rather slight
25 record. His guideline would be 200 to 235, even without the

1 guideline -- wait a minute. 140 to 175 plus 60 would be 200
2 to 235.

3 We submit to this Court that is certainly sufficient
4 to meet the purposes of sentencing. He can be rehabilitated.
5 He will be incapacitated. He will miss out on his entire
6 youth, at this point what youth he has left. He's 28, but at
7 this point by the time he gets out, he'll be close to 50, even
8 if he gets sentenced at the guideline that we are facing
9 without an upward departure.

10 He's not a career offender. If he got out and got
11 in trouble again he would come back as a career offender and
12 would be sentenced to just a mountain of time, a bigger
13 mountain than what he's already facing right now.

14 He has two children that he loves and who he was
15 trying to take care of. He did try to rehabilitate himself.
16 He was trying to turn his life around. I actually have the
17 paystubs that he had started working at this roofing company
18 called Master Build Enterprises. I had them send me all of
19 their paperwork, and I have several paystubs to show -- and I
20 have a copy, I thought, for the Government. These are just
21 weekly paystubs to show he was, in fact, trying to get himself
22 together.

23 The paystubs vary. He wasn't working the same
24 amount every week. One week he might make 300. Some of them
25 show 450. Here is one that shows 600. So it varied.

1 But, Your Honor, I point that out not to take away
2 from the bad that he's done but to show he was trying to do
3 something good. He didn't get it right, obviously. He got it
4 very wrong, but he was trying to turn things around.

5 I received character letters. They were too late to
6 send to the Court. I did not want to violate the policy and
7 send them late, but those letters were from his girlfriend's
8 mom and her brother, and they both talked about how he had
9 always -- even as a very young man losing his dad, his dad had
10 passed away at 18, but it talked about how Cody took his being
11 a father very seriously and was always talking to the boys and
12 always trying to make sure the family had what they needed.

13 Your Honor, we certainly see young men in here who
14 have children scattered around a community and they're not
15 taking care of them. That's not who Cody Locklear was or who
16 he is today.

17 He has no history of violence. He graduated high
18 school, so he's able to learn some skills through the BOP
19 programs and to do better.

20 We're asking you to consider these things and to
21 sentence him in the guideline range without an upward
22 variance, without an upward departure.

23 THE COURT: Thank you.

24 At this time I'll hear from Mr. Locklear, if you'd
25 like to make a statement about your sentence, sir.

1 THE DEFENDANT: Your Honor, I would just like to
2 start off and say I apologize and say how sorry I am for so
3 many choices I've made in life. And at the time I was just in
4 an unstable environment. Even though my parents taught me
5 drugs were wrong, I saw so much of it and was so used to it, I
6 just made bad decisions and started doing the same thing.
7 Even though I was never a violent person, I still did things I
8 shouldn't have and was not thinking clearly for myself and
9 others.

10 I just want to say I'm sorry for the decisions I've
11 made and the people I may have hurt. And I just want to say
12 I'm sorry, Your Honor. That's it.

13 THE COURT: Thank you. Anything else, Ms. Webb?

14 MS. WEBB: No, sir, Your Honor.

15 (Pause in the proceeding.)

16 THE COURT: All right, Mr. Locklear.

17 The Court recognizes its obligation to impose a
18 sentence sufficient but not greater than necessary to comply
19 with the purposes set forth in the statute.

20 I have considered all arguments your lawyer has
21 made. I have considered your statement. I have considered
22 the position of the United States. I have considered the
23 advisory guideline range.

24 Among other things, I'm to consider the nature and
25 circumstances of the offense and the history and

1 characteristics of the defendant, the need for the sentence
2 imposed to reflect the seriousness of the offense, to promote
3 respect for the law, and to provide just punishment; the need
4 for the sentence imposed to deter others who might choose to
5 engage in the criminal behavior that brings you here; the need
6 for the sentence imposed to protect the public from further
7 crime by you; the need for the sentence imposed to provide you
8 with needed educational or vocational training, medical care,
9 or other correctional treatment in the most effective manner.

10 The statute lists numerous other factors. I've
11 considered all those factors, although I won't mention each
12 one individually.

13 As for the nature and circumstances of the offense,
14 you did plead guilty to three offenses: Conspiracy to
15 distribute and possess with the intent to distribute 40 grams
16 or more of a mixture and substance containing a detectable
17 amount of fentanyl, 10 grams or more of a mixture and
18 substance containing a fentanyl analogue, and a quantity of
19 heroin and quantity cocaine; Count 7, distribution of 10 grams
20 or more of a mixture and substance containing a detectable
21 amount of fentanyl analogue, quantity of heroin, and 40 grams
22 or more of a mixture and substance containing a detectable
23 amount of fentanyl; and possession of firearms in furtherance
24 of a drug trafficking crime.

25 Your offense conduct is described in detail in the

1 PSR. I do find it to be an accurate description. Between
2 December 2017 and July 17th, 2019, you're conservatively
3 responsible for distributing 41.96 grams of fentanyl analogue,
4 1.4 kilograms of marijuana, 41.89 grams of fentanyl, .68 grams
5 of Oxymorphone, 240.98 grams of heroin, 28.35 grams of crack
6 cocaine, .33 grams of amphetamine, and 3.061 kilograms of
7 cocaine.

8 Additionally, you possessed three firearms in
9 connection with the drug trafficking activities. You
10 maintained a premises for purpose of manufacturing and
11 distributing a controlled substance.

12 You obviously engaged in all of this conduct over a
13 long period of time, including, as Ms. Webb pointed out, a
14 time period where there's a search warrant executed at the
15 Mount Zion Church Road residence on August 24th, 2018, and you
16 ultimately then move your operation and continue to engage in
17 narcotics trafficking as reflected in paragraphs 24, 25, 26,
18 27, 28, and 29.

19 During that period you also -- February 5th, 2019,
20 as reflected in paragraph 41, pleaded guilty to possession of
21 a firearm by a felon and got a 23- to 40-month sentence. You
22 were released to post-release supervision in March of 2019 and
23 you obviously continued to engage in drug dealing as reflected
24 in the testimony of Detective Sealy and as recounted in the
25 PSR. Obviously, not good at all in terms of somebody not

1 learning a thing from having gone to prison for criminal
2 behavior. Having been the subject of a search warrant, not
3 stopping and reflecting someone who claims he wants to be a
4 good father. Good fathers don't sell poison to other people.
5 You don't poison other people's children to feed your own.
6 That's not being a good father; that's being terrible.

7 This type of behavior needs to be punished, it needs
8 to be deterred, people who engage in it need to be
9 incapacitated, society needs to be protected from people who
10 deal drugs like the ones you're dealing. It's ravaging
11 communities, and you're part of the problem.

12 Today, you will reap what you have sown. You will
13 harvest what you have planted. Your decisions have
14 consequences. You'll feel the full force of those
15 consequences today.

16 I'm not going to upwardly depart or upwardly vary,
17 but I am going to impose a sentence that will incapacitate
18 you; that will provide just punishment.

19 I've taken into account all the arguments your
20 lawyer has made about your efforts at working, about your age,
21 about the amount of time you'll spend in prison, but you have
22 had many opportunities to reflect on the choices you're making
23 along the way. You have continued to persist in dealing drugs
24 and this other criminal behavior that has serious effects on
25 individuals.

1 Thankfully, none of these people died. But it's
2 clear to me that you were selling drugs that were getting them
3 on the edge. That's a choice you've made and you'll pay a
4 price for that. The message needs to go back to Robeson
5 County, if you decide to be a heroin dealer, cut it with
6 fentanyl or use a fentanyl analogue and you come here, the
7 punishment will be severe, and it should be. This needs to
8 stop.

9 Too many people are being harmed by people like you
10 who choose greed over the betterment of the community. And
11 you do it again and again, day after day, week after week,
12 month after month.

13 Having fully considered the entire record in the
14 case, the need to incapacitate this defendant, the need to
15 provide just punishment, it's the judgment of the Court that
16 Cody Alexander Locklear is hereby committed to the custody of
17 the Bureau of Prisons to be imprisoned for 174 months on
18 Counts 1 and 7 to be served concurrently, and 60 months
19 consecutive on Count 11 for a total sentence of 234 months.

20 Pursuant to the plea agreement, Counts 3, 4, 5, 8,
21 9, and 10 are dismissed.

22 I've also signed the forfeiture order.

23 Upon release, you'll be on supervised release for
24 five years. This consists of five years on Counts 1, 7, and
25 11 to run concurrently.

1 You'll comply with the mandatory and standard
2 conditions and the following additional conditions: You'll
3 participate in a narcotic addiction treatment program, consent
4 to a warrantless search, cooperate in the collection of DNA,
5 support your children. You will have a job while you're
6 incarcerated. I'm not going to impose a fine. Any money you
7 earn will go to support your children. They at least deserve
8 that. They deserve a lot more from anybody who claims to want
9 to be a good father. You'll pay a special assessment of \$300,
10 which is due immediately. I'm not going to impose a fine.

11 I do think I've properly calculated the advisory
12 guideline range, but I announce pursuant to *U.S. v.*
13 *Gomez-Jimenez*, 750 F.3d 370 (4th Cir. 2014) and *U.S. v.*
14 *Hargrove*, 701 F.3d 156 (4th Cir. 2012), that I'd impose the
15 same sentence as an alternative variant sentence. This is the
16 sentence sufficient but not greater than necessary for
17 Mr. Locklear in light of all the 3553(a) factors that I
18 discussed.

19 In addition, I have considered all frivolous and
20 non-frivolous arguments made by each side. To the extent this
21 sentence is in any way inconsistent with the sentence
22 advocated for by counsel, it's because I have weighed the
23 3553(a) factors differently than they have. I have considered
24 all their arguments. I reject those arguments that are in any
25 way inconsistent with the sentence I have announced. This is

1 the sentence sufficient but not greater than necessary for
2 Cody Alexander Locklear in light of all the 3553(a) factors
3 that I have discussed.

4 Mr. Locklear, you can appeal your conviction if you
5 believe that your guilty plea was somehow unlawful or
6 involuntary or if there's some other fundamental defect in the
7 proceeding that was not waived by your guilty plea.

8 You also have a statutory right to appeal your
9 sentence under certain circumstances, particularly if you
10 think your sentence is contrary to law.

11 However, you did enter into a plea agreement that
12 contains an appellate waiver. In light of your sentence, I
13 believe you waived your right to appeal your sentence.

14 If you believe the waiver is unenforceable or
15 inapplicable for any reason, you can present that theory to
16 the Appellate Court.

17 With few exceptions, any Notice of Appeal must be
18 filed within 14 days of the judgment being entered on the
19 docket in your case.

20 If you're unable to pay the cost of an appeal, you
21 may apply for leave to appeal *in forma pauperis*.

22 If you so request, the Clerk of Court will prepare
23 and file a Notice of Appeal on your behalf.

24 Did you want me to make any recommendations?

25 MS. ALLEN: Your Honor, we'd ask for Bennettsville.

1 THE COURT: I recommend FCI Bennettsville. Recommend
2 vocational/educational opportunities.

3 Anything else?

4 MS. ALLEN: No. Thank you, Your Honor.

5 THE COURT: Anything else, Ms. Webb?

6 MS. WEBB: No, sir, Your Honor.

7 THE COURT: I thank counsel for their work here
8 today. That'll conclude the matter of Mr. Locklear.

9 Good luck to you, sir.

10 * * *

11 (The proceedings concluded at 11:16 a.m.)

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UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF OFFICIAL REPORTER

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
8 Court Reporter, in and for the United States District Court
9 for the Eastern District of North Carolina, do hereby certify
10 that pursuant to Section 753, Title 28, United States Code,
11 that the foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is
14 in conformance with the regulations of the Judicial Conference
15 of the United States.

18 | Dated this 5th day of October, 2020.

/s/ Amy M. Condon
Amy M. Condon, CRR, CSR, RPR
U.S. Official Court Reporter